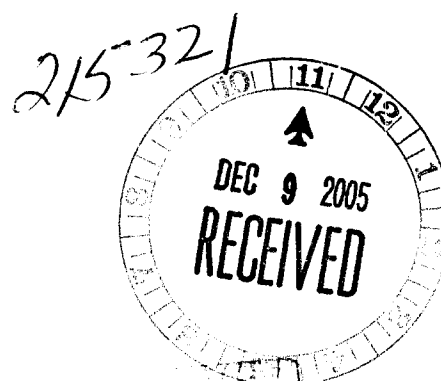


CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177
(206) 546-1936
FAX: (206) 546-3739



8 December 2005

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001


Re: City of Alameda -- Acquisition Exemption --
Alameda Belt Line, F.D. 34798

Dear Mr. Williams:

On behalf of City of Alameda, enclosed for filing in the above-captioned proceeding please find an original and ten copies of a Notice of Exemption for M.P. 0.0 to M.P. 2.61 of Alameda Belt Line. City believes that it is fee exempt as a unit of government under this Board's fee regulations (49 C.F.R. 1002.2(e)(1)). Without waiver of this position, but instead with a purpose of expediting the filing process, I enclose herewith on behalf of the City a check in the amount of \$1500 for the filing fee.

By my signature below, I certify service upon representatives of Alameda Belt Line as indicated on page 9 of the Notice of Exemption by depositing the Notice with an express service on this date for next day delivery to the persons indicated.

Thank you for your assistance in this matter.

Very truly,

Charles Montange
for City of Alameda

Encls.

cc. General Manager, ABL
BNSF Law Dept.
Messrs. Bittin & Salvaty
Carol Korade, City Attorney, Alameda
(all w/encl.)

Office of Public Hearings
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Public Hearings

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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34798

CITY OF ALAMEDA
-- ACQUISITION --
ALAMEDA BELT LINE

Office of the
Public Record

NOTICE OF EXEMPTION

City of Alameda ("City"), a Municipal Corporation of the State of California, submits this Notice of Exemption pursuant to 49 C.F.R. § 1150.31, et seq., for the acquisition of the line of railroad owned by Alameda Beltline Railroad in Alameda, California.

Per 49 C.F.R. § 1150.34, a caption summary is set forth in Exhibit A.

City submits the following information in compliance with 49 C.F.R. § 1150.33:

(a). Name and address of applicant: City of Alameda, Att: Carol Korade, City Attorney, 2263 Santa Clara Avenue, Alameda, CA 94501.

(b). Name, address and telephone number of representative of applicant who should receive correspondence: Charles H. Montange, 426 NW 162d St., Seattle, WA 98177.

(c). Statement concerning agreement: Alameda Beltline Railroad and the City of Alameda entered into an agreement dated December 15, 1924, and codified in Ordinance No. 259 approved by the Alameda City Council on September 16, 1924. Among other things, the agreement provided that the City would convey [subject to any necessary authorization from the Interstate Commerce Commission (ICC) and the Railroad Commission of California (RCC)] its existing rail line on Clement Avenue between Broadway and Grand Streets for \$30,000 to the newly organized Alameda Beltline Railroad [owned by Atchison, Topeka and Santa Fe Railway (ATSF) and Western Pacific Railroad Company(WP)]. Alameda Beltline Railroad would construct and operate extensions of this line westerly to Webster Street and therefrom westerly as rapidly as possible. Paragraph 14 of the agreement provided as follows:

"Fourteenth: Said City shall have the right at any time hereafter to purchase said belt line railroad including all extensions thereof, for a sum equal to the original cost, together with the cost of any and all additional investments and extensions made therein by said ALAMEDA BELT LINE, provided that said City shall give at least one year's previous notice of its intention so to do by ordinance to that effect; and provided that at the same time it purchases from the parties of the first part, or either of them as the case may be, the branch railroad, extensions and spur tracks

referred to in the twelfth section hereof.

"It is agreed that said ALAMEDA BELT LINE will keep an accurate account of the cost of additional investments and extensions, and file a verified report thereof annually with the city Clerk of said City, similar to the report filed with the Railroad Commission. It is further agreed and understood that the term 'investments' as herein used shall not include the cost of upkeep and repairs."

The transactions envisioned under the agreement were authorized by RCC in a decision reported at 26 Cal. RR Comm'n Dec. 801 (1925), attached as Exhibit B, and by ICC in Acquisition and Construction of Line by Alameda Belt Line, ICC F.D. 4682 (and embraced cases), 105 ICC 349, decided Jan. 16, 1926, attached as Exhibit C.¹

This Board's predecessor (the Interstate Commerce Commission, or ICC) authorized abandonment of 0.83 miles of the ABL railroad in Docket No. AB-89 (Sub-no. 1), served August 25, 1975. That authorization covered the ABL line from M.P. 2.61 to M.P. 3.44 (the naval air station). City has asked ABL to disclose any other abandonment authorization received by ABL for any portion of its

¹ The referenced agreement also contained an option, not relevant here, for other transcontinental carriers like Southern Pacific to acquire an interest in ABL equal to that owned by WP and ATSF. That option is not relevant here. A copy of the referenced agreement is an exhibit in the proceedings before the ICC which culminated in the authorization at 105 ICC 349.

line. ABL has disclosed no other authorization. Despite searches of government files, City is aware of no authorizations for abandonment for any other portions of the ABL system. City concludes that M.P. 0.0 to M.P. 2.61 remains under this Board's jurisdiction.

ABL, now owned by Burlington Northern and Santa Fe Railway Company (BNSF, as successor to ATSF) and Union Pacific Railroad Company (UP, as successor to WP), granted local trackage rights to UP over 1.80 miles of ABL's rail line between MP 0.00 near Clement Avenue and MP 1.80 near Sherman Street. According to the STB order authorizing the trackage rights transaction, the parties intended that after trackage rights were effective, UP would handle rail cars as operating agent for BNSF. See Union Pacific Railroad Company --Trackage Rights Exemption -- Alameda Belt Line, F.D. 33682, served Nov. 24, 1998. A schematic map filed in F.D. 33682 showing UP's trackage rights is attached as Exhibit D.

City has ascertained that ABL may have engaged in sales of parcels important for operation of the remainder of its system without abandonment authority, and that ABL may be continuing to offer to sell parcels important for continued rail operation without abandonment authority.²

In response to community interest in preserving the ABL rail

² City reserves all rights in connection with any sales of ABL property inconsistent with continued rail use and in the absence of effective abandonment authority.

yard as open space, in accordance with planning documents anticipating light rail use compatible with rail freight use, and in further accordance with the agreement between ABL and the City, the City adopted Ordinance 2817 N.S., on November 2, 1999, notifying ABL that the City intended to exercise its option to purchase on December 4, 2000.

This Board has indicated that contract disputes must be directed to state courts. E.g., D&I Railroad Co. -- Trackage Rights Exemption -- State of South Dakota, F.D. 34646-1, served Jan. 19, 2005 ("contractual dispute respecting the scope of the rights retained by or granted to the State and/or BNSF under the 1986 Operating Agreement must be resolved in a court of competent jurisdiction").

Alameda Belt Line filed suit contesting the legality of the City's contractual repurchase option in the California state courts. The initial question in the state court lawsuit was whether the repurchase option was consistent with the statute of frauds. In Alameda Belt Line v. City of Alameda, 113 Cal.App. 4th 15, 5 Cal.Rptr.3d 879 (2003), the California Court of Appeals found that the provision was enforceable under State law. The case has been remanded for trial, which is slated for April 2006.

Alameda Belt Line in pleadings in the state court proceeding which it initiated has asserted federal preemption as a defense to the City's exercise of its repurchase option. City understands

this to mean that Alameda Belt Line intends to assert that this Board's permission must be obtained prior to actual acquisition. In order to address this defense, City of Alameda files this Notice of Exemption to obtain authorization to acquire the railroad line, including all extensions, as provided in its agreement with Alameda Belt Line which undergirds the transactions approved by this Board's predecessor, ICC, in its decision reported at 105 ICC 349.

(d). Operator: Union Pacific currently serves all remaining ABL customers pursuant to this Board's authorization set forth in F.D. 33682, supra. City proposes no change in this arrangement, and anticipates that operations will continue as before. According to City's research, the last rail equipment operated on this line was in 2003. The railroad and/or adjacent landowners have removed track at several points on the line. In the event Union Pacific lawfully terminates its trackage rights and lawfully ceases to provide service, City either will contract with another operator (with appropriate authority to provide service), or will seek appropriate authorization for abandonment (including railbanking), as the circumstances warrant. Upon acquisition, City may need temporarily to embargo the line in light of track removal by ABL, by UP, or by adjacent landowners.

(e). Brief summary of proposed transaction: City will acquire the Alameda Belt Line, including all extensions, from MP 0.00 near Clement Avenue in the City of Alameda to its westernmost

terminus, MP 2.61, near Webster Street, in accordance with City's contractual repurchase option.

1. Name and address of transferror: Alameda Belt Line, 2001 Engineer Road, Oakland CA 94607.

2. Proposed time schedule. The closing date is in part contingent upon the outcome of the pending litigation, currently scheduled for trial in April 2006. Closing may occur earlier in the event of a negotiated settlement.

3. Mileposts. M.P. 0.00 near Clement Street to end of line at M.P. 2.61 near Webster Street.

4. Total route miles. Approximately 2.61 miles of mainline, approximately 0.6 mile of branch track (encompassing the "No. 5 Lead Track" referenced in the Union Pacific trackage rights notice of exemption on file with this Board in F.D. 33682), and such additional branch tracks as are set forth in the map filed by UP in F.D. 33682 (copy attached as Exhibit D). It is the intention of City of Alameda by this Notice of Exemption to obtain authorization to acquire all Alameda Belt Line rail property in City of Alameda still under this Board's jurisdiction.

(f) Map. A map indicating the area served, origins, termini, stations, city, county, county and state, is attached as Exhibit E.

(g) Certificate of revenue. The required Certificate is attached as Exhibit F.

Applicant acknowledges that it must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, is achieved.

Environmental thresholds. City's acquisition will not result in significant changes in carrier operations such as would trigger any need for environmental review. More specifically, in reference to stated thresholds, there will not be a diversion of:

(1) more than 1000 carloads of rail traffic per year to motor carriage; or

(2) an average of 50 carloads of rail track per mile per year for any part of this line to motor carriage.

This transaction will not result in:

(1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line;

(2) an increase of rail yard activity of at least 100 percent; or

(3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles per day.

To the extent City's acquisition relates to a Class I or nonattainment area under the Clean Air Act, the thresholds specified in 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. The transportation of ozone depleting materials is not contemplated. Under 49 C.F.R. § 1105.6(c)(2), further

environmental documentation is not required.

Since the acquisition is for continued operation, there are no plans to dispose or alter properties subject to STB jurisdiction that are 50 years old or older. No historic report is therefore required under 49 C.F.R. § 1105.8(b)(1).

Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Counsel for Applicant
City of Alameda (CA)

Exhibits:

- A -- caption summary
- B -- CRRC decision
- C -- ICC decision
- D -- UP trackage rights map from 1998
- E -- map
- F -- Revenue Certificate
- G -- Verification

cc. General Manager, Alameda Beltline Railroad
2001 Engineer Rd, Oakland, CA 94607
BNSF Law Department, Att: Sarah Bailiff, Esq., 2500
Lou Menk Drive, Fort Worth, TX 76161-0039
[City believes BNSF handles ABL legal matters]
William M. Bittin & Benjamin B. Salvaty, Esqs.,
Hill, Farrer & Burrill LLP, One California Plaza,
37th Floor, 300 South Grand Avenue, Los Angeles, CA
90071-3147

Exhibit A

Applicant City of Alameda hereby submits the following caption summary prepared in accordance with 49 C.F.R. § 1150.34:

Surface Transportation Board

Notice of Exemption

STB Finance Docket No. 34798

City of Alameda -- Acquisition Exemption -- Alameda Belt Line

City of Alameda, a non-carrier, has filed a notice of exemption to acquire Alameda Belt Line's line between approximately MP 0.0 near Clement Avenue and approximately MP 2.61 near Webster Street in City of Alameda, Alameda County, CA. Comments must be filed with the Board and served on Charles H. Montange, 426 NW 162d St., Seattle, WA 98177, telephone (206) 546-1936.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Exhibit B

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CALIFORNIA RAILROAD COMMISSION DECISIONS.

VALUE OF ONE HUNDRED DOLLARS PER SHARE. (2) AUTHORIZING THE WESTERN PACIFIC RAILROAD COMPANY AND THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY TO PURCHASE SAID CAPITAL STOCK.

Application No. 10888.

Decided July 14, 1925.

SECURITIES—STOCK—TO ISSUE.—Application granted.

F. M. Angellotti, for Western Pacific Railroad Company.

E. W. Camp, for The Atchison, Topeka and Santa Fe Railway Company.

Platt Kent and James S. Moore, Jr., for Alameda Belt Line.

E. J. Foulds and F. L. Burckhalter, for Southern Pacific Company.

McCutchen, Olney, Maunon and Greene, by *Allan P. Matthew*, for Encinal Terminals.

Frank Oris, Mayor, and *Clifton E. Hickok*, City Manager, for the City of Alameda.

Dunne, Brobeck, Phleger and Harrison, by *G. A. Corbett*, for Key System Transit Company.

DECOTE, Commissioner.

OPINION.

Alameda Belt Line, a corporation organized under and by virtue of the laws of the State of California, asked permission to issue and sell at par five hundred thousand dollars (\$500,000) par value of its common stock, divided into shares of one hundred dollars (\$100) each. This application came on for hearing on the twenty-sixth day of March, 1925, and at subsequent dates to which the hearing was from time to time continued.

The Southern Pacific Company opposed the application on the following grounds:

First, that the Southern Pacific Company was already in the field proposed to be served by the Alameda Belt Line and that the granting of the application would lead to a duplication of the service of the Southern Pacific Company;

Second, that it was impossible for the applicant and the Western Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company to handle freight to and from the proposed terminal as cheaply as it was possible for them to handle freight under the present arrangement with the Southern Pacific Company.

In order to arrive at a full understanding of the matter, the Southern Pacific Company was permitted to present its opposition in full and the Western Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company and the Encinal Terminals were also permitted to present their evidence to the Commission.

As these matters will be passed upon by the Interstate Commerce Commission in Finance Docket Nos. 4682 to 4686, inclusive, I see no reason to discuss them here.

It is of record that the Western Pacific Railroad Company herein-after called the Western Pacific and The Atchison, Topeka and Santa

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CALIFORNIA RAILROAD COMMISSION DECISIONS.

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The Railway Company, hereinafter called the Santa Fe, have caused Alameda Belt Line to be incorporated and that the purpose of such corporation is to operate a belt line railroad within the boundaries of the city of Alameda and to serve the industrial area and waterfront of said city by the acquisition for the sum of \$30,000 from the city of Alameda of an existing belt line railroad and extend and operate the same to serve the industrial area and waterfront in said city. The route and termini of the proposed line of railroad to be acquired and the extensions thereof are as follows:

(A) Existing belt line:

Beginning at a point 185 feet, more or less, easterly of the intersection of the center line of Clement avenue and Broadway; thence by a single track along the center line of Clement avenue in a westerly direction and crossing all intervening streets to a point in Clement avenue at the westerly line of Grand street, a distance of 6364.5 feet.

(B) Proposed extension:

Beginning at a point in existing track on Clement avenue near Minturn street; thence by a single track on an S curve over and along private rights of way and intervening streets southerly and westerly to Buena Vista avenue at Hibbard street; thence westerly along the northerly side of Buena Vista avenue to a point thereon between Benton street and Bay street; thence by a single or double track curving northerly over private rights of way and intervening streets and continuing in a northerly direction to a proposed freight ferry slip on the estuary of San Antonio; and also running from a convenient point on said proposed line located about 1000 feet southerly from said proposed freight ferry slip, in a general westerly direction over private rights of way and crossing all intervening streets to the westerly side of Webster street at or near the so-called "segregation line," and continuing westerly over private rights of way and crossing all intervening streets to the shore line of San Francisco Bay, a distance of 14,600 feet, more or less.

As stated, the Alameda Belt Line has agreed to purchase from the city of Alameda the belt line railroad for \$30,000. The company estimates that it will have to expend \$389,018.35 to extend the line which it intends to purchase from the city in a general westerly direction from a connection with the existing track of the city's railroad in Clement avenue near Minturn street to the westerly line of Webster street, including the line to a proposed freight ferry slip to be located on the estuary of San Antonio; with interchange track on Clement avenue between Broadway and Park street, and also classification yard, track scales, water and oil facilities, and engine houses, and that an expenditure of \$75,527.23 is necessary in extending the line in a general westerly direction from the westerly line of Webster street to the shore line of San Francisco Bay. The total estimated expenditure of the Alameda Belt Line is reported at \$494,545.58. The testimony shows that this expenditure will be incurred as soon as the industrial development warrants the same.

The Alameda Belt Line asks permission to issue all of its stock forthwith, but requires the subscribers of such stock to make an initial payment equal in amount to 10 per cent only of the par value of the shares issued. The balance of the stock subscription is to be paid when called

(3)

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CALIFORNIA RAILROAD COMMISSION DECISIONS.

for by the board of directors of the Alameda Belt Line. It is of record that the Western Pacific has subscribed for and agreed to purchase 2480 shares and the Santa Fe 2480 shares of the authorized capital stock of Alameda Belt Line. Forty shares of the company's authorized stock have been subscribed for by the incorporators of the company.

It has not been the policy of the Commission to authorize the issue of assessable stock. The Commission believes that neither stock nor stock certificates should be issued until fully paid. As advances are made by the Santa Fe and Western Pacific to Alameda Belt Line, such company may issue its stock at par, equal in par value to the money advanced by the two companies, or other companies that may join in the enterprise.

The order herein will permit the Western Pacific and the Santa Fe to purchase and hold the stock of the Alameda Belt Line.

I herewith submit the following form of order:

ORDER.

Alameda Belt Line having applied to the Railroad Commission for permission to issue \$500,000 of stock, a public hearing having been held and the Commission being of the opinion that the money, property or labor to be procured or paid for through such issue and sale is reasonably required by the company and that the expenditures herein authorized are not in whole or in part reasonably chargeable to operating expense or to income;

It is hereby ordered, that the Alameda Belt Line be and it is hereby authorized to issue at not less than par on or before December 31, 1926, \$500,000 of its common capital stock and use the proceeds obtained from the sale of such stock to acquire from the city of Alameda the railroad properties referred to in Exhibit "B" filed in this proceeding, and to construct the railroad properties described in Exhibit "D" filed in this proceeding; provided, that no stock or stock certificates may be issued by the Alameda Belt Line until it has received full payment for such stock or stock certificates.

It is hereby further ordered, that the Western Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company be and they are hereby authorized to purchase and hold the stock of Alameda Belt Line.

The authority herein granted to issue stock is subject to the following conditions:

1. Applicant shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the twenty-fifth day of each month, a verified report, as required by the Railroad Commission's General

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CALIFORNIA RAILROAD COMMISSION DECISIONS.

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Order No. 24, which order, in so far as applicable, is made a part of this order.

2. Authority herein granted to issue stock will become effective within twenty (20) days from the date hereof.

The foregoing opinion and order are hereby approved as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this fourteenth day of July, 1925.

DECISION No. 15187.

IN THE MATTER OF THE APPLICATION OF SAN JOAQUIN COMPRESS AND WAREHOUSE COMPANY, A CORPORATION, FOR AN ORDER AUTHORIZING THE ISSUANCE OF TWO HUNDRED FIFTY (250) ADDITIONAL SHARES OF THE CAPITAL STOCK AT PAR, TO WIT, ONE HUNDRED DOLLARS.

Application No. 11179.

Decided July 16, 1925.

SECURITIES—STOCK—TO ISSUE.—Application granted.

Wiley and Harvey, by T. N. Harvey, for Applicant.

BY THE COMMISSION.

OPINION.

In this application, as amended at the hearing held before Examiner Fankhauser, the Railroad Commission is asked to make an order authorizing San Joaquin Compress and Warehouse Company to execute a lease contract for the purchase of compress equipment and to issue \$25,000 of its common stock in addition to the \$75,000 of stock heretofore authorized to be issued by Decision No. 14002, dated August 30, 1924, in Application No. 10364.

In Application No. 10364, filed with the Commission on August 8, 1924, the company reported that it had an option to purchase, for \$10,000, twenty-two acres of land in Bakersfield upon which it intended to erect a warehouse and cotton compress, and it asked permission to issue and sell \$75,000 of stock at par, to finance in part the cost thereof. The company's request was granted by Decision No. 14002.

The present application shows that the company has acquired the land and has proceeded with the erection of the compress plant and warehouse and the grading and construction of spur tracks thereto, it being estimated that the work will be completed in time to take care of this year's cotton crop. It is reported, however, that the \$75,000 obtained through the issue and sale of the stock authorized by Decision No. 14002 is inadequate to meet the expenditures necessary for its construction work and for that reason it has been decided to issue an additional \$25,000 of stock, applicant reporting that it has found it

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Exhibit C

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ACQUISITION AND CONSTRUCTION BY ALAMEDA BELT LINE 349

FINANCE DOCKET No. 4682¹

ACQUISITION AND CONSTRUCTION OF LINE BY ALA-
MEDA BELT LINE

Submitted December 12, 1925. Decided January 16, 1926

1. Certificate issued authorizing the Alameda Belt Line (a) to acquire a line of railroad and (b) to construct extensions thereto in Alameda County, Calif.
2. Authority granted to the Alameda Belt Line to issue \$500,000 of common capital stock, consisting of 5,000 shares of the par value of \$100 each.
3. Acquisition by the Atchison, Topeka & Santa Fe Railway Company and the Western Pacific Railroad Company of control of the Alameda Belt Line through the purchase by each of one-half of the capital stock of that company approved and authorized.
4. Certificate issued authorizing the Atchison, Topeka & Santa Fe Railway Company to extend its operations by means of car floats, lighters, barges, and ferries, to be operated on the estuary of San Antonio and San Francisco Bay, Calif.
5. Certificate issued authorizing the Western Pacific Railroad Company to extend its operations by means of car floats, lighters, barges, and ferries, to be operated on the estuary of San Antonio and San Francisco Bay, Calif.
6. Request of Alameda Belt Line for permission to retain excess earnings dismissed in part and denied as to the remainder.

F. M. Angellotti for Western Pacific Railroad Company, *E. W. Camp* for Atchison, Topeka & Santa Fe Railway Company, *Platt Kent* and *James S. Moore, jr.*, for Alameda Belt Line, and *E. J. Foulds* for Southern Pacific Company.

Allan P. Matthew and *McCutchen, Olney, Mannon & Greene* for Encinal Terminals.

Frank Otis, Clifton E. Hickok, and *William J. Locke* for city of Alameda.

J. G. Hunter for Railroad Commission of California.

¹ This report also embraces Finance Docket No. 4685, Application of Alameda Belt Line for Authority to Issue Capital Stock; Finance Docket No. 4686, Joint Application of Atchison, Topeka & Santa Fe Railway Company and Western Pacific Railroad Company for Authority to Acquire Control of Alameda Belt Line by Purchase of Capital Stock; Finance Docket No. 4683, Application of Western Pacific Railroad Company for Authority to Extend its Service by Car Floats, Lighters, Barges, and Ferries on the Estuary of San Antonio and Bay of San Francisco, Calif.; Finance Docket No. 4684, Application of Atchison, Topeka & Santa Fe Railway Company for Authority to Extend its Service by Car Floats, Lighters, Barges, and Ferries on the Estuary of San Antonio and Bay of San Francisco, Calif.

105 I. C. C.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND WOODLOCK

BY DIVISION 4:

Exceptions were filed to the report proposed by the examiner and the case was argued orally.

The Alameda Belt Line, a corporation organized for the purpose of engaging in interstate commerce by railroad, hereinafter called the Belt Line, on March 2, 1925, filed an application under paragraph (18) of section 1 of the interstate commerce act for a certificate that the present and future public convenience and necessity require (a) the acquisition by it of a line of railroad located wholly in the city of Alameda, Alameda County, Calif., extending along Clement Avenue, from a point 180 feet east of its intersection with Broadway, in a general westerly direction to the westerly line of Grand Street, a distance of 6,364.5 feet; and (b) the construction of an extension of said line of railroad in a westerly and northerly direction to a proposed car-ferry slip at the foot of Morton Street (if projected), with a further westerly extension to the shore line of San Francisco Bay, a distance of 14,600 feet. Permission is also requested under paragraph (18) of section 15a of the act to retain the excess earnings from the proposed line. The Belt Line has also duly applied under section 20a of the act for authority to issue \$500,000 of common capital stock, consisting of 5,000 shares of the par value of \$100 each. The Atchison, Topeka & Santa Fe Railway Company and the Western Pacific Railroad Company, hereinafter called the Santa Fe and the Western Pacific, respectively, on March 3, 1925, filed a joint application under paragraph (2) of section 5 for authority to acquire control of the Belt Line by purchase of capital stock. The Santa Fe, on March 2, 1925, filed its application under paragraph (18) of section 1 for a certificate that the present and future public convenience and necessity require the extension of its operations by means of car floats, lighters, barges, and ferries, to be operated by it on the waters of the estuary of San Antonio and on San Francisco Bay between its existing wharves and slips on the water fronts of Oakland, San Francisco, and Richmond, and a freight-ferry slip to be constructed in Alameda, fronting on the estuary of San Antonio, with such railroad trackage as may be necessary to make direct connection with the proposed railroad of the Belt Line. * The distances between the Santa Fe's existing wharves and slips in Oakland, San Francisco, and Richmond, and the proposed Alameda ferry slip are approximately 3,000 feet and 7 and 11 nautical miles, respectively. The Western Pacific has duly applied under paragraph (18) of section 1 for a certificate authorizing it to operate car floats, lighters, barges, and ferries on the estuary of San

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Antonio and on San Francisco Bay between its existing wharves and slips on the water fronts of Oakland and San Francisco and the said ferry slip above mentioned proposed to be constructed in Alameda, with such railroad trackage as may be necessary to make connection with the proposed railroad of the Belt Line. The distances between the Western Pacific wharves on the Oakland and San Francisco water fronts and the proposed ferry slip in Alameda are approximately 4 and 7 miles, respectively. The five applications relate to the same general project, were heard together by the Railroad Commission of California at our request, and will be disposed of in one report. The Southern Pacific Company appeared at the hearing and opposed the granting of the authority sought. No other appearance was made at the hearing in opposition to the authority sought. The California commission, in similar proceedings pending before it, entered an order authorizing the Belt Line to issue \$500,000 of common capital stock at not less than par, and to use the proceeds from the sale thereof to acquire the line of railroad in question and to construct the contemplated extensions thereto. The order further granted authority to the Western Pacific and the Santa Fe to purchase and hold the stock of the Belt Line. The member of the California commission who presided at the hearing has filed certain suggestions with us to the effect that the Santa Fe and the Western Pacific be permitted to enter Alameda territory in the method proposed by them, and that the Belt Line and the Southern Pacific grant each other trackage rights over their respective lines within the industrial zone of Alameda.

The cities of Oakland and Alameda both lie on the eastern side of San Francisco Bay. They are separated by the San Antonio Estuary, a navigable arm of San Francisco Bay, from 100 to 200 yards wide, which runs inland approximately 4 miles and connects with San Leandro Bay. The two cities, while separated by political subdivisions, form one general community. Alameda is included in the Oakland switching district, but is not served directly by any carrier for freight service except the Southern Pacific. The other transcontinental carriers reaching Oakland must depend upon the Southern Pacific to switch their Alameda traffic. The north shore of San Antonio Estuary, in Oakland, has experienced a large commercial and industrial development, while the south shore in Alameda is mostly undeveloped.

In 1918 the city of Alameda built the track along Clement Avenue which the Belt Line proposes to acquire. The line has since been operated by the Southern Pacific as a spur or industry track, the city receiving \$2.50 for each car moving over it, which is paid by the shippers in addition to the applicable line-haul and switching

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on the instant applications. Much of the testimony relates to the relative cost and efficiency of the present switching service as compared with the proposed barge service. The Santa Fe's main freight terminal is at Richmond. It also has a freight station and ferry slip at the foot of Alice Street in Oakland, less than 0.5 mile from the proposed Alameda slip, which is served by car ferry and is not otherwise connected with its other railroad properties. The Santa Fe interchange yards are located on Wood Street, Oakland, near the Southern Pacific classification yard, where traffic is delivered to the latter company for switching to Alameda. Freight arriving over the Western Pacific is transferred to the Southern Pacific classification yard for switching to Alameda. There is considerable testimony respecting delays to Santa Fe and Western Pacific cars switched by the Southern Pacific. Exhibits introduced by the Encinal Terminals show that the average times consumed between the placement of cars on the Santa Fe-Southern Pacific interchange and the Western Pacific-Southern Pacific interchange and their delivery at the Encinal Terminals are 19 hours and 14 $\frac{1}{3}$ hours, respectively. It appears delays result due, in part at least, to the difficulty of coordinating the switching service of connecting line-haul carriers. Testimony for the Santa Fe is that it would take approximately 1.5 hours to move cars by barge from Richmond to Alameda. No additional equipment will be needed by either the Santa Fe or Western Pacific, as their existing barges are adequate to care for the additional business. Santa Fe barges must be used in handling business to its Alice Street terminal and can be moved across the estuary to Alameda without much additional expense.

The Southern Pacific switching charge is \$2.70 per car, to which must be added \$2.50 accruing to the city as a rental charge. The switching charge is absorbed by the other lines on competitive traffic only. There are also in effect certain so-called premium switching charges applying on competitive business by which the carrier having the line haul pays to the switching carrier 56 cents per ton on transcontinental traffic with a minimum of \$8.55 per car, 28 cents per ton to or from territory west of transcontinental territory with a minimum of \$5.85 per car, except that where the rate on traffic from west of transcontinental territory does not exceed \$2.25 per ton switching is handled at the basic charge of \$2.70 per car. A large part of the anticipated traffic from the Belt Line in the near future is expected to consist of canned goods and dried fruits moving to transcontinental territory, with an average loading of 31 tons a car. This would make the absorption by the Western Pacific and Santa Fe approximately \$17.50 per car, plus the city's track rental charge. It is claimed that switching charges on traffic for

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ACQUISITION AND CONSTRUCTION BY ALAMEDA BELT LINE 355

Santa Fe and Western Pacific industries between the Oakland switching limits and Alameda will be substantially reduced if these lines acquire the Belt Line. The Belt Line charge will be \$3.50 per car. Under their contract with the city the Santa Fe and Western Pacific agree to absorb this charge on both competitive and noncompetitive traffic, where the line-haul revenue exceeds \$11.50 a car, and as the Southern Pacific absorbs similar charges on competitive and noncompetitive traffic handled at other terminals in the vicinity of San Francisco Bay it will probably find it necessary to make the same absorptions at Alameda. Southern Pacific less-than-carload rates apply to Alameda. Similar rates of the Santa Fe and Western Pacific apply only to Oakland, the rate to Alameda being 7 cents per 100 pounds higher. If the Belt Line project is consummated all rates to the two points will be the same. Testimony for the Santa Fe is to the effect that the proposed method of barging freight to Alameda would not increase its expenses very largely.

To secure funds for the acquisition of the existing line and for the construction of the proposed extensions, with the necessary spur, industrial, team, switching, and side tracks, the Belt Line proposes to issue the total amount of common capital stock authorized by its charter, namely, \$500,000, consisting of 5,000 shares of the par value of \$100 each. Forty shares will be sold at par as directors' qualifying shares, and the remainder will be sold in equal amounts, 2,480 shares each, to the Santa Fe and Western Pacific, also at par. The two companies have duly applied for authority to purchase these shares, and also to buy at par one-half each of the 40 shares subscribed for by the original incorporators, subject to the holding thereof by directors of the Belt Line to qualify them as such directors under the laws of California.

The estimated traffic of the Belt Line is 7,000 cars the first year, increasing to 10,400 cars the fifth year. After the fifth year the traffic is expected to increase from 10 to 15 per cent annually. Gross revenues are expected to total \$24,000 the first year and \$36,400 the fifth year. Net railway operating income is expected to show a deficit of \$406 the first year, increasing to an income of \$11,126 the fifth year.

The estimated cost of the proposed extension from the present westerly terminus to the west line of Webster Street, including the line to the proposed ferry slip, together with interchange track on Clement Avenue, classification yard, track scales, water and oil facilities, and engine house is \$389,018.35. The further extension from the west side of Webster Street to the shore line of San Francisco Bay is estimated to cost \$75,527.23. The Belt Line expects to

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acquire the city's line and to begin construction of the proposed extensions as soon as authority therefor is received and necessary rights of way obtained.

On behalf of the Santa Fe and Western Pacific it is testified that they have but a limited area in Oakland available for industrial purposes, that most of the desirable locations are reached by the Southern Pacific, that the Santa Fe gets but a comparatively small traffic from Oakland, that the two companies for some time have felt the need of making available additional acreage for the location of industries, and have considered that the vacant land in Alameda would afford them an opportunity to attract industries to their rails. While operations of the Belt Line may not produce a direct profit, the additional line-haul traffic which it is expected to develop for the owning companies is thought by them to justify the capital investment.

Prior to making the contract the city authorities of Alameda made a study of the belt-line situation in many American cities. In their opinion the ideal solution would be for the city to extend the track and operate it in a manner similar to the State Belt Railroad, which is owned and operated by the Board of State Harbor Commissioners, and serves the water front of San Francisco, providing a neutral switching service for the carriers entering that city. Being unable to finance the project the city entered into the contract with the Santa Fe and Western Pacific. The city considers it essential that its territory adapted to industrial development should be accessible directly to more than one railway carrier, so as to have the advantages accruing from competitive service. It desires that all railways operating in its vicinity shall have the opportunity for direct access free from interference by any one of them. The proposed plan appears to have the united support of the commercial and shipping interests of Alameda.

Southern Pacific tracks reach Alameda over the so-called Fruitvale Avenue bridge. The company also maintains a passenger-ferry slip at the westerly end of Alameda, and owns large water-front holdings west of Webster Street. It alleges that there are no industries along the proposed extension and no promise to establish any; that its tracks suitable for industrial switching are constructed on two or more sides of each area the proposed extension would serve and are adequate to handle any business that might develop for many years; that there is not enough business, present or prospective, to support two separate systems; that the territory is now served adequately by all trunk lines, either directly or through interchange; that an increase in operating expenses would

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result from the duplication of operating costs to serve a territory now adequately served; that the probable earnings are not expected to pay the expense of operation; and that the only object of the proposed construction is to place the applicants in a more favorable competitive position. The Southern Pacific states that it will not become a one-third stock owner in the Belt Line, its chief reason, apparently, being that the proposal involves a comparatively large investment to extend lines paralleling tracks it has already constructed. Since negotiations were instituted by the city it appears that the Southern Pacific has built tracks paralleling the proposed right of way of the Belt Line, some of which have no present or presently prospective use. It admits that the tracks would not have been built at this time except for the activities of the Belt Line, and gives as the main reason for their construction a desire to protect its present investment. It appears that the amount thus expended was more than sufficient to acquire a one-third stock ownership in the Belt Line. The Southern Pacific claims that its investment in Alameda exceeds \$10,000,000, and that it falls short of earning a reasonable return thereon by \$690,000 each year. It admits that the largest part of the expenditure has been made for passenger business, but claims that much of its plant is potentially available for freight. The Alameda pier, the ferry boats operating between Alameda and San Francisco, a large shop for the maintenance of passenger inter-urban cars, the cars themselves, the electrified system over the main tracks, and a portion of the tracks on Lincoln Avenue and Fernside Boulevard are used almost wholly for passenger operation. A part of the tracks on Lincoln Avenue and the so-called Fernside loop are unavailable for freight operation because of franchise limitations. The tracks of this carrier border the University of California tract on three sides and could serve any industries to be located thereon by the construction of the necessary industry tracks. A further track extends westerly and southerly along the water front from which the area west of the university's property could be served by the construction of additional tracks. The cost of such construction, as compared with the construction proposed by the Belt Line, is not shown.

In its brief the Southern Pacific cites a number of cases in which we have denied applications for authority to construct new lines of railroad, designed almost wholly for competitive purposes. Conditions surrounding the construction of new railroads differ from those affecting the installation of terminal facilities, and decisions applicable in the one instance are without controlling importance in the other.

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The Belt Line's proposed railroad would benefit Alameda by aiding in the development of a large industrial area. It would also tend to lower the present charges on traffic to and from Alameda, and would give shippers at that point the benefits of competitive service. The Santa Fe and Western Pacific apparently will profit from the line-haul movement on traffic to be developed.

Upon the facts presented we find:

1. That the present and future public convenience and necessity require (a) the acquisition by the Belt Line of the line of railroad and (b) the construction of the extensions thereto, in Alameda County, Calif., described in its application recorded under Finance Docket No. 4682.
2. That the proposed issue by the Belt Line of \$500,000 of common capital stock (a) is for lawful objects within its corporate purposes, and compatible with the public interest, which is necessary and appropriate for and consistent with the proper performance by it of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose.
3. That the acquisition by the Santa Fe and Western Pacific of control of the Belt Line through the purchase by each of one-half of the entire capital stock of that company, will be in the public interest, and that the terms and conditions under which said capital stock is to be acquired are just and reasonable.
4. That the present and future public convenience and necessity require the extension of its operations by the Santa Fe by means of car floats, lighters, barges, and ferries, to be operated on the estuary of San Antonio and on San Francisco Bay, Calif., as described in its application recorded under Finance Docket No. 4684.
5. That the present and future public convenience and necessity require the extension of its operations by the Western Pacific by means of car floats, lighters, barges, and ferries, to be operated on the estuary of San Antonio and on San Francisco Bay, Calif., as described in its application recorded under Finance Docket No. 4683.
6. That the matters of record do not justify the grant of permission to the Belt Line to retain excess earnings, as requested in its application recorded under Finance Docket No. 4682. Such request will be dismissed so far as it relates to the line already constructed and will be denied as to the proposed extensions.

An appropriate certificate and order will be issued. Such certificate and order will provide that it shall take effect and be in force from and after 30 days from the date it is issued.

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ACQUISITION AND CONSTRUCTION BY ALAMEDA BELT LINE 359

CERTIFICATE AND ORDER

Issued January 16, 1926

A hearing and investigation of the matters and things involved in these proceedings having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is hereby certified, That the present and future public convenience and necessity require (a) the acquisition by the Alameda Belt Line of the line of railroad and (b) the construction by it of the extensions of said line of railroad in Alameda County, Calif., described in its application recorded under Finance Docket No. 4682 and in the report aforesaid: *Provided, however,* and this certificate is issued upon the express condition, that the construction of said extensions shall be commenced on or before June 1, 1926, and be completed to Webster Street, Alameda, on or before May 31, 1927; and that the further extension westerly from Webster Street to the shore line of San Francisco Bay shall be completed on or before December 31, 1929.

It is ordered, That the Alameda Belt Line shall report to this commission in writing the commencement and the completion of such construction within 15 days after such commencement or completion, respectively.

It is further ordered, That the Alameda Belt Line, when filing schedules establishing rates and fares applicable on said line of railroad, shall in such schedules refer to this certificate by title, date, and docket number.

It is further ordered, That the request of the Alameda Belt Line for permission to retain excess earnings be, and it is hereby, dismissed so far as it relates to the line of railroad already constructed, and that such request, so far as it relates to the proposed extensions be, and it is hereby, denied.

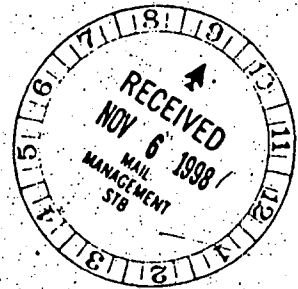
It is further ordered, That the Alameda Belt Line be, and it is hereby, authorized to issue \$500,000 of common capital stock, consisting of 5,000 shares of the par value of \$100 each, said stock to be sold at par as follows: 40 shares for use as directors' qualifying shares, 2,480 shares each to the Western Pacific Railroad Company and the Atchison, Topeka & Santa Fe Railway Company; the proceeds of such sales to be used solely for the purposes stated in its application recorded under Finance Docket No. 4685 and in the report aforesaid.

It is further ordered, That, except as herein authorized, said stock shall not be sold, pledged, repledged, or otherwise disposed of by
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Exhibit D

92107

Before the
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 33682

UNION PACIFIC RAILROAD COMPANY
— TRACKAGE RIGHTS EXEMPTION —
ALAMEDA BELT LINE

NOTICE OF EXEMPTION

1998

UNION PACIFIC RAILROAD COMPANY
Joseph D. Anthofer, General Attorney
Jeanna L. Regier, Registered Practitioner
1416 Dodge Street, #830
Omaha, Nebraska 68179
(402) 271-4315
(402) 271-4835

Dated: November 5, 1998
Filed: November 6, 1998

CALIFORNIA

ALAMEDA COUNTY

EXHIBIT 1 - MAP
F.D. NO. 33682

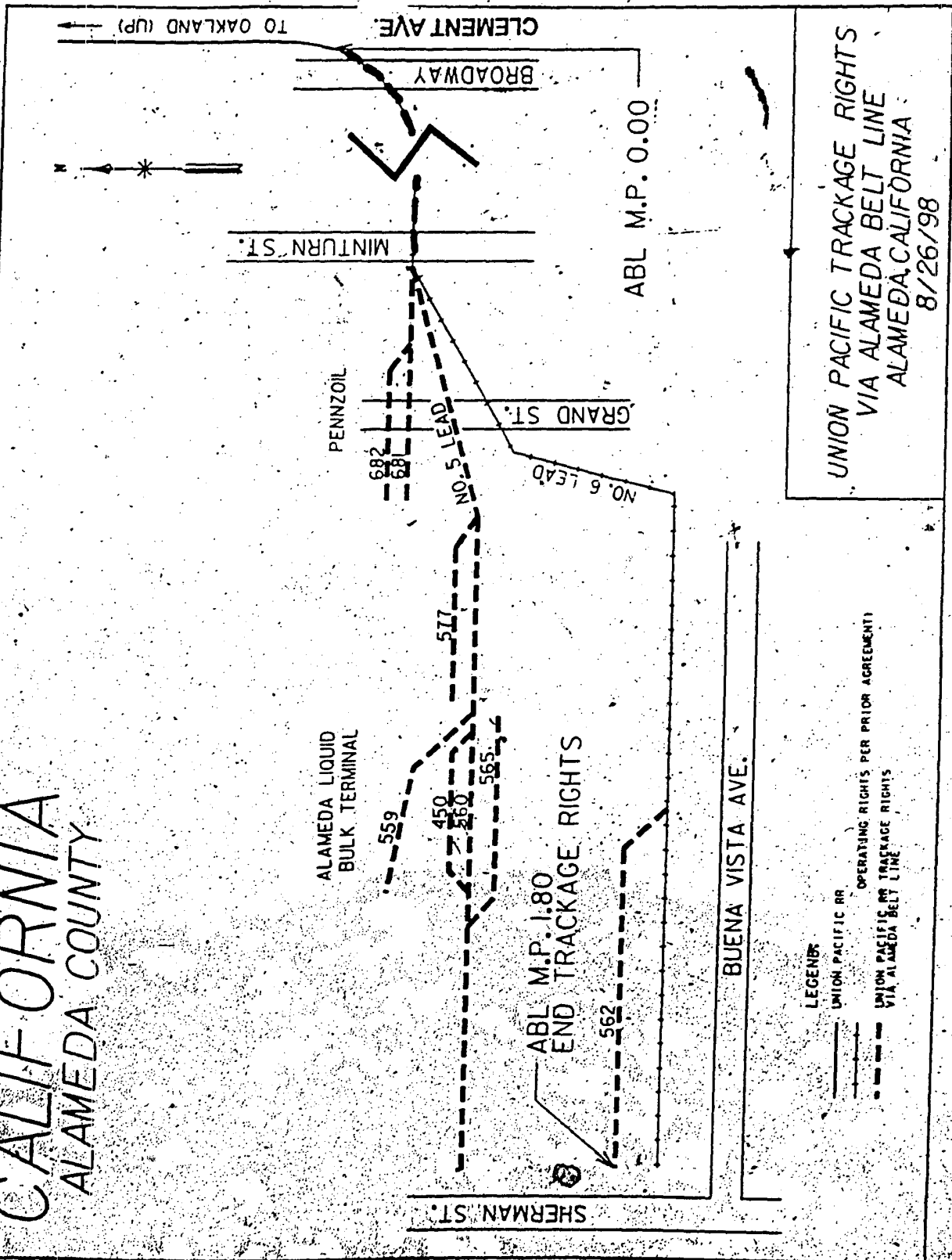
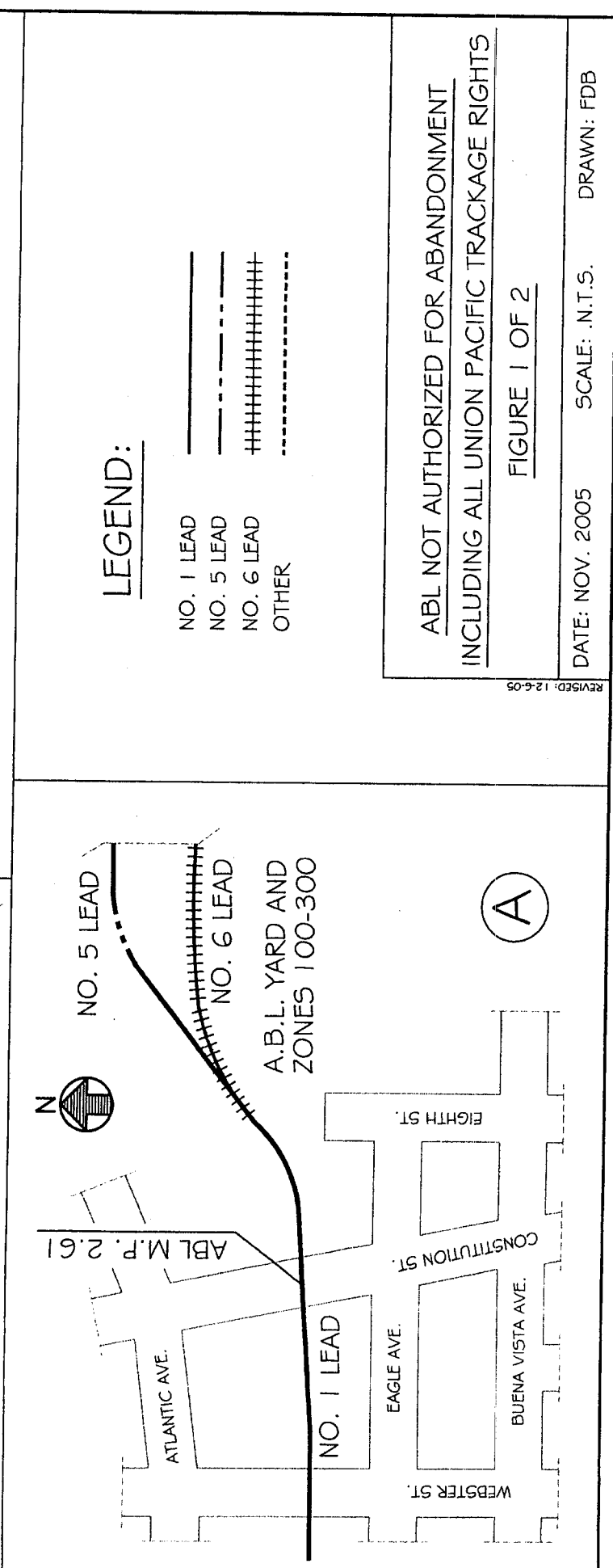
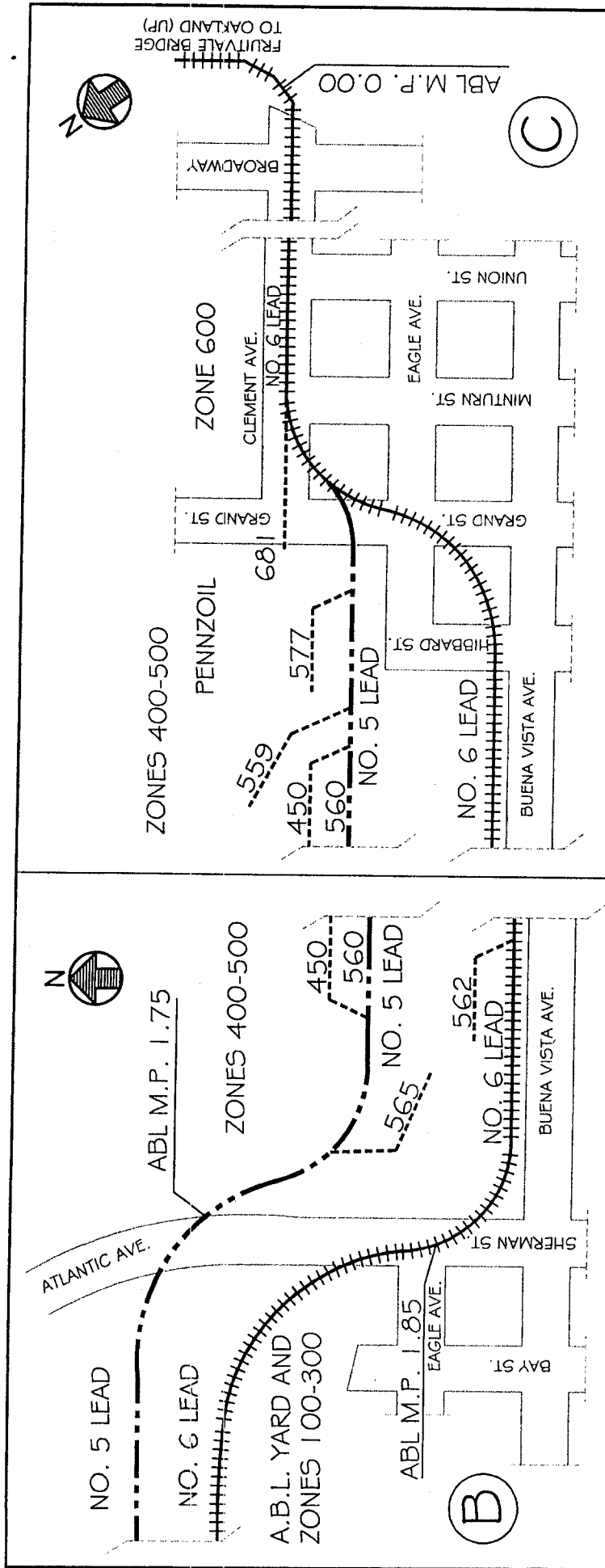


Exhibit E

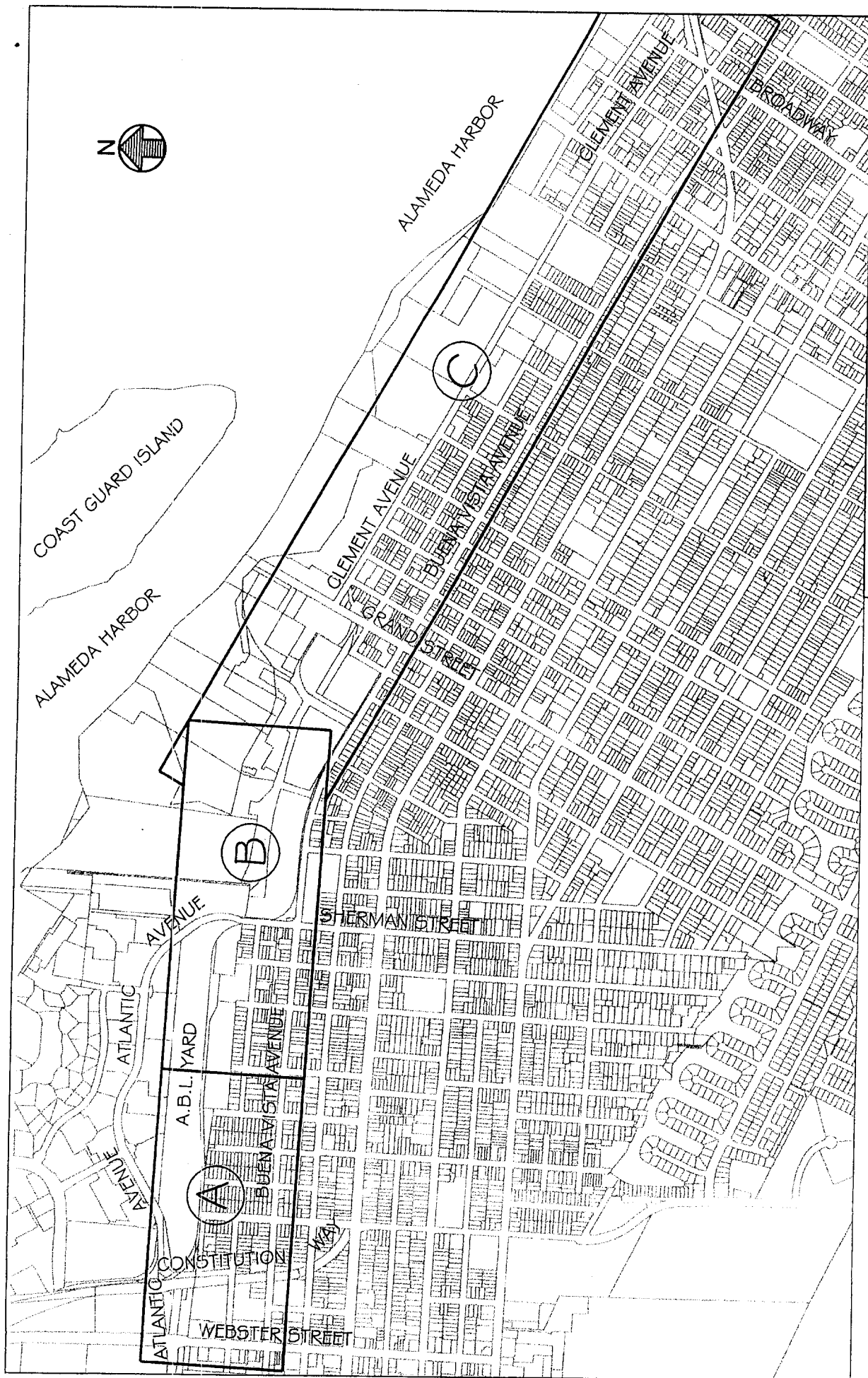


LEGEND:

- NO. 1 LEAD
- NO. 5 LEAD
- NO. 6 LEAD
- OTHER

ABL NOT AUTHORIZED FOR ABANDONMENT
INCLUDING ALL UNION PACIFIC TRACAGE RIGHTS

FIGURE 1 OF 2



ABL NOT AUTHORIZED FOR ABANDONMENT
INCLUDING ALL UNION PACIFIC TRACKAGE RIGHTS

FIGURE 2 OF 2

DATE: NOV. 2005 SCALE: 1" = 1200' DRAWN: FDB

REVISED: 12-6-05

Exhibit F

Certificate in Accordance
With 49 C.F.R. § 1150.33(g)

I, Carol Korade, City Attorney of City of Alameda, hereby certify that applicant City's projected revenues as a result of the transaction covered by this notice of exemption will not exceed those that would qualify it as a Class III carrier.

A handwritten signature in cursive script, appearing to read "Carol Korade", written over a horizontal line.

Carol A. Korade

Exhibit G

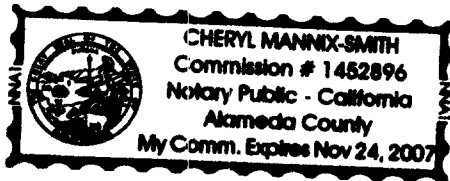
Verification

State of California)
) ss.
County of Alameda)

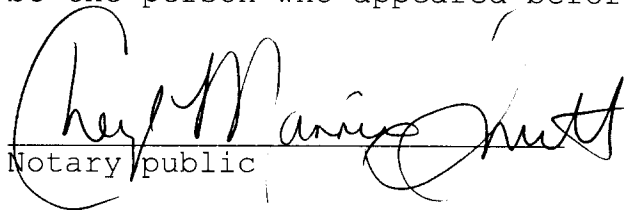
I, Carol Korade, being duly sworn, depose and state that I am City Attorney of the City of Alameda, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information and belief.



Carol A. Korade



Subscribed and sworn to before me on this 7 th day of December, 2005, by Carol Korade, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.


Notary public